

PROPOSED REGULATION 25137-14
LANGUAGE ADOPTED IN OTHER STATES FOR SYMPOSIUM DISCUSSION

Me. Rev. Stat. Ann. § 5212 Apportionment of income of mutual fund service providers.
Maine

§ 5212 -- Apportionment of income of mutual fund service providers.

1. Definitions.

As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Administration services" includes, but is not limited to, clerical, fund or shareholder accounting; participant record-keeping; transfer agency; bookkeeping; data processing; custodial; internal auditing; legal; and tax services performed for a regulated investment company. Services qualify as administration services only if the provider of such service or services during the taxable year also provides, or is affiliated with a person that provides, management or distribution services to the same regulated investment company during the same taxable year.

B. "Distribution services" includes, but is not limited to, the services of advertising, servicing, marketing or selling shares of a regulated investment company. The services of advertising, servicing or marketing shares qualify as distribution services only when the service is performed by a person who is or, in the case of a closed-end company, was either engaged in the services of selling regulated investment company shares or affiliated with a person that is engaged in the service of selling regulated investment company shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to 15 United States Code, Section 80a-15(b), as amended.

C. "Domicile" of a shareholder of a regulated investment company is presumed to be the shareholder's mailing address on the records of the regulated investment company or the mutual fund service provider. If the regulated investment company or the mutual fund service provider has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, the presumption does not control. If the shareholder of record is a person that holds the shares of a regulated investment company as depositor for the benefit of a separate account, then the shareholder of record is the contract owner or policyholder of the contracts or policies supported by the separate account, and it is presumed that the domicile of that shareholder of record is the contract owner's or policyholder's mailing address to the extent that the regulated investment company maintains such mailing addresses in the regular course of business. If the shareholder's principal place of business is different than the shareholder's mailing address, the presumption does not control.

D. "Management services" includes, but is not limited to, the rendering of investment advice directly or indirectly to a regulated investment company, making determination as to when sales and purchases of securities are to be made on behalf of the regulated investment company or the selling or purchasing of securities constituting assets of a regulated investment company and related activities. Services qualify as management services only when such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to 15 United States Code, Section 80a-15(a), as

amended, for a person that has entered into such contract with the regulated investment company or for a person that is affiliated with a person that has entered into such contract with a regulated investment company.

E. "Mutual fund service provider" means any taxpayer subject to tax under this Part, other than a financial institution as defined in section 5206-D, subsection 8 , that derives more than 50% of its gross income from the direct or indirect provision of management, distribution or administration services to or on behalf of a regulated investment company or from trustees, sponsors and participants of employee benefit plans that have accounts in a regulated investment company.

F. "Regulated investment company" means a regulated investment company as defined in the Code, Section 851.

2. Election of special apportionment of formula for mutual fund service providers.

Notwithstanding any other provision of this Title, a mutual fund service provider may elect to apportion its net income by the method provided for in this section. The election, if made, is irrevocable for successive periods of 5 years. The net income of an electing mutual fund service provider may be apportioned to this State as follows.

A. Net income is multiplied by a fraction, the numerator of which is the Maine receipts during the taxable year and the denominator of which is the total receipts everywhere for the same taxable year.

B. For purposes of this subsection, Maine receipts from the direct or indirect provision of management, distribution or administration services to or on behalf of a regulated investment company or from trustees, sponsors and participants of employee benefit plans that have accounts in a regulated investment company are determined by multiplying total receipts for the taxable year from each separate regulated investment company for which the mutual fund service provider performs management, distribution or administration services by a fraction. The numerator of the fraction is the average of the number of shares owned by the regulated investment company's shareholders domiciled in this State at the beginning of and at the end of the regulated investment company's taxable year, and the denominator of the fraction is the average of the number of the shares owned by the regulated investment company's shareholders everywhere at the beginning of and at the end of the regulated investment company's taxable year.

C. Receipts other than from the provision of services described in paragraph B are Maine receipts if they would qualify as Maine sales under section 5211, subsection 15 or 16.

3. Combined reporting not applicable.

Notwithstanding any other provision of this Title, a mutual fund service provider that has elected the apportionment method provided for in this section is not required to file a combined report, and neither the income nor the property, payroll or sales of a mutual fund service provider that has elected the apportionment method provided for in this section may be included in a combined report of another taxpayer.

Conn. Gen. Stat. § 12-218 Apportionment of net income.
Connecticut

(f)

(1) Each taxpayer that provides management, distribution or administrative services, as defined in this subsection, to or on behalf of a regulated investment company, as defined in Section 851 of the Internal Revenue Code shall apportion its net income derived, directly or indirectly, from providing management, distribution or administrative services to or on behalf of a regulated investment company, including net income received directly or indirectly from trustees, and sponsors or participants of employee benefit plans which have accounts in a

regulated investment company, in the manner provided in this subsection. Income derived by such taxpayer from sources other than the providing of management, distribution or administrative services to or on behalf of a regulated investment company shall be apportioned as provided in this chapter.

(2) The numerator of the apportionment fraction shall consist of the sum of the Connecticut receipts, as described in subdivision (3) of this subsection. The denominator of the apportionment fraction shall consist of the total receipts from the sale of management, distribution or administrative services to or on behalf of all the regulated investment companies. For purposes of this subsection, "receipts" means receipts computed according to the method of accounting used by the taxpayer in the computation of net income.

(3) For purposes of this subsection, Connecticut receipts shall be determined by multiplying receipts from the rendering of management, distribution or administrative services to or on behalf of each separate regulated investment company by a fraction

(A) the numerator of which shall be the average of

(i) the number of shares on the first day of such regulated investment company's taxable year, for federal income tax purposes, which ends within or at the same time as the taxable year of the taxpayer, that are owned by shareholders of such regulated investment company then domiciled in this state and

(ii) the number of shares on the last day of such regulated investment company's taxable year, for federal income tax purposes, which ends within or at the same time as the taxable year of the taxpayer, that are owned by shareholders of such regulated investment company then domiciled in this state; and

(B) the denominator of which shall be the average of the number of shares that are owned by shareholders of such regulated investment company on such dates.

(4)

(A) For purposes of this subsection, "management services" includes, but is not limited to, the rendering of investment advice directly or indirectly to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of the regulated investment company, or the selling or purchasing of securities constituting assets of a regulated investment company, and related activities, but only where such activity or activities are performed

(i) pursuant to a contract with the regulated investment company entered into pursuant to 15 USC 80a-15(a), as from time to time amended,

(ii) for a person that has entered into such contract with the regulated investment company, or

(iii) for a person that is affiliated with a person that has entered into such contract with a regulated investment company.

(B) For purposes of this subsection, "distribution services" includes, but is not limited to, the services of advertising, servicing, marketing or selling shares of a regulated investment company, but, in the case of advertising, servicing or marketing shares, only where such service is performed by a person that is, or, in the case of a closed end company, was, either engaged in the service of selling such shares or affiliated with a person that is engaged in the service of selling such shares. In the case of an open end company, such service of selling shares shall be performed pursuant to a contract entered into pursuant to 15 USC 80a-15(b), as from time to time amended.

(C) For purposes of this subsection, "administrative services" includes, but is not limited to, clerical, fund or shareholder accounting, participant

record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for a regulated investment company but only if the provider of such service or services during the income year in which such service or services are provided also provides, or is affiliated with a person that provides, management or distribution services to such regulated investment company.

(D) For purposes of this subsection, a person is "affiliated" with another person if each person is a member of the same affiliated group, as defined under Section 1504 of the Internal Revenue Code without regard to subsection (b) of said section.

(E) For purposes of this subsection, the domicile of a shareholder shall be presumed to be such shareholder's mailing address as shown in the records of the regulated investment company except that for purposes of this subsection, if the shareholder of record is an insurance company which holds the shares of the regulated investment company as depositor for the benefit of a separate account, then the taxpayer may elect to treat as the shareholders the contract owners or policyholders of the contracts or policies supported by such separate account. An election made under this subparagraph shall apply to all shareholders that are insurance companies and shall be irrevocable for, and applicable for, five successive income years. In any year that such an election is applicable, it shall be presumed that the domicile of a shareholder is the mailing address of the contract owner or policyholder as shown in the records of the insurance company.

Md. Regs. Code 03.04.03.08 Apportionment of income.
Maryland

(D)(5) Services to Regulated Investment Companies.

(a) Receipts from services that are derived directly or indirectly from the sale of management, distribution, administration, or securities brokerages services to, or on behalf of, a regulated investment company or its beneficial owners (including receipts derived directly or indirectly from trustees, sponsors, or participants of employee benefit plans that have accounts in a regulated investment company) shall be allocated to this State to the extent that shareholders of the regulated investment company are domiciled in this State. A separate computation shall be made with respect to the receipts derived from each regulated investment company. The total amount of receipts derived from each regulated investment company which are allocable to this State shall be equal to the total receipts so derived multiplied by a fraction:

(i) The numerator of which is the average of the sum of the beginning-of-the-year and end-of-the-year number of shares owned by the regulated investment company share-holders domiciled in this State; and

(ii) The denominator of which is the average of the sum of the beginning-of-the-year and end-of-the-year number of shares owned by all shareholders.

(b) For purposes of the fraction, the year shall be the taxable year of the regulated investment company that ends with or within the taxable year of the taxpayer.

(c) "Domicile" means the shareholder's mailing address on the records of the regulated investment company. If the regulated investment company or the person providing management services to the registered investment company has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, then the

shareholder's primary residence or principal place of business is the shareholder's domicile. If the shareholder's address is not known or determinable and it is impracticable to obtain this information, then the domicile of the shareholder will be the location or domicile of the business entity that provides the impetus for the transaction.

Example 9: Mutual Fund X is an investment option in a Sec. 401(k) plan sponsored by Company Z located and domiciled in Ohio, but the mutual fund does not maintain addresses of the plan participants. The "customer" and associated receipts would be domiciled in Ohio. If the Mutual Fund does maintain addresses of the plan participants, the "customer" and associated receipts would be assigned to Maryland if the address of the plan participant is in Maryland.